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The Sun.

Government's War on Fake Bankruptcies
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WAR UNITED STATES IS WAGING ON FRAUDULENT BANKRUPTCY EVIL

Great Progress Made by Federal Attorneys in Rooting Out Dishonest Practices That Have Robbed Honest Merchants of Huge Sums--- Some of the Shrewd Tricks Used to Conceal Assets

FRAUDULENT bankruptcies and failures are materially decreasing and commercial dishonesty is on the wane as the result of efforts on the part of the United States District Attorney's office to prosecute with equal severity the merchant of big business who finds it economically profitable to plead insolvency and the little shop keeper whose assets only amount to a few thousand dollars.

According to Assistant United States District Attorney Samuel Hershenstein, whose activity in the prosecution of bankruptcy frauds has won him praise from the New York Credit Men's Association and other business organizations, the professional bankrupt is beginning to realize for the first time that the Government is on his trail and that there is no chance to escape once the machinery of the law gets in motion.

For the purpose of showing the small merchant that he can't make away with an amount as low as $5,000 three cases have been prosecuted within the last three months in which the assets in question all fell within that amount. There are records on file in the office to show that there have been more prosecutions already in 1915 under the bankruptcy act than there were from 1910 to 1912 inclusive. There were two and a half times as many in 1914 as in 1913. Hitherto the Government spent its energy on the big offenders, now it brings to trial both big and small.

As an example of the increased efficiency of the office and the despatch with which offenders are brought to justice, Mr. Hershenstein mentioned the case of the Gradinger Brothers, which came up for trial last fall. The petition was filed on a certain day, he said, and four days later an investigation was started by the United States Attorney's office.

On the eighth day a warrant was issued and on the day following the brothers were indicted. Four days later they were sentenced to long terms in Atlanta. It took just thirteen days to close the case. This, of course, is a record, and was made possible by the defendants pleading guilty.

"This was a typical case," said Mr. Hershenstein in outlining for readers of THE SUNDAY SUN the scope of the bankruptcy law and some of the important cases falling within the jurisdiction of his office. "The defendants sold $20,000 worth of merchandise before they failed, and distributed the proceeds among relatives for safe keeping. Some of it was stored in warehouses under fake names.

"They destroyed the books of account and were making ready for a departure from these shores when the Government authorities discovered their intent and arrested them. Had there not been quick action in this case the estate would have been left penniless.

"Sometimes clever bookkeeping devices are used to cover a dissipation of assets, but no matter how clever they may be there are skilled Government accountants who can detect a fraudulent system. Let me cite the case of Lang & Lang, who pleaded guilty in February.

"The charge against them was a conspiracy to conceal assets. A casual examination of their books—cash books, ledgers and journals—showed they were in balance. Through a stray entry in the ledger, however, it was found advisable to send a form letter to the customers of the defunct firm to ascertain whether the sales of merchandise and payments therefor were entered on the books.

"Thousands of returned bills and certified checks came to this office in answer to the form letter, and an examination of these proved that many sales had not been entered on the books. That was one form of concealment. There was another, however. The cash books showed for one day cash receipts of $1,000, say, from three or four sources and a corresponding deposit for that amount. Externally, you see, it appeared that every cent was deposited.

"An examination of the original deposit slips subpœnaed by the Government disclosed an interesting state of affairs. It was discovered that although the deposits on the slips equalled the amount received by the firm on a particular day, as shown in the cash book, that amount was made up in part of the actual moneys received by the firm and in part by a redeposit of the firm's own checks made out to the names of fictitious persons and indorsed by the firm or its agents in the name of fictitious persons. It took a corps of skilled Government accountants to discover this."

Mr. Hershenstein then dwelt upon some of the technical loopholes in the existing bankruptcy act and suggested several administrative amendments which have already met with the approval of United States District Court Judges Hough, Mayer and Augustus N. Hand at a conference on bankruptcy, recently called under the auspices of the National Association of Credit Men.

"The two fundamental principles for enacting this Federal bankruptcy act," he said, "were, first, to secure among the creditors of the bankrupt equality of distribution of the assets of an insolvent estate, economically and expeditiously, and, second, to offer to the unfortunate merchant who had, through honest error of judgment or financial reverses, fallen into commercial trouble, an opportunity to settle with his creditors or secure his discharge by due process of law and start anew.

"Mind you, it was not contemplated that the procedure to be followed in this equitable distribution should devour an undue portion of the tangible assets of the estate in bankruptcy, but are purely legal matters that need attention and the business of the bankrupt never to be continued if irremediable injury is to result to the State. There will be one set of fees, one set of expenses and the greatest economy and almost a uniform expeditiousness in winding up the insolvent estate will result thereby.

"Another matter which is very important at the present time is the abuses which follow in the wake of proxy voting. Every merchant ought to be represented at a creditors' meeting, either personally or by a credit man, and if that is impracticable by some responsible agent of the concern, so that no one committee, no one faction, no one attorney, shall control votes sufficient to elect a trustee or decide the destinies of a settlement or composition.

"I charge many persons with being indifferent and inattentive and indirectly responsible for the smallness of the amount in dividends paid by a number of estates in bankruptcy. Many of them have the idea that it is hardly worth while to bother about the details of administration, because at best they may get 5 or 10 per cent. in dividends.

"This is the situation which brings about amicable understandings between counsel for the receiver, counsel for the petitioning creditors and counsel for the bankrupt, and division of fees between opposing interests that are sometimes discovered and sometimes not—a practice which has been declared as unethical and unprofessional by our Circuit Court of Appeals; situations that in the last analysis throw a blight on honest bankruptcy practice.

"Shall the average man fight back, since the man who flaunts a majority in number and amount of claims in his face is in control? If the average man starts fighting will he not eat up every penny of available assets by endless delays, manifold and unnecessary examinations, appeals and counter appeals on questions of law and similar contrivances?

"I am glad to say that there are fighters, and it is due to the single fighters, the dissenting minority, the persistent objecting creditors, that the United States District Attorney's office has in the last year alone commenced three prosecutions to my knowledge in cases assigned to me alone, all of which have been successful, and in two of the three cases the estates paid more than twice the original offer of composition, and the bankrupts and aiders and abettors in their criminal practices were sentenced to lengthy sojourns in Federal penitentiaries.

"There is another matter which must be remedied if the honest merchant is to be protected, nay, distinguished, from the dishonest. It must be made more difficult to obtain a discharge, by that I mean the burden of proof necessary to be brought forward on the part of the objecting creditor should be of such a degree that when it has been proved to the satisfaction of the Judge that prima facie reason exists for the refusal of a discharge then the granting or the refusal of a discharge shall be within his Honor's discretion under the particular circumstances of the case before the court.

"As the law stands to-day the proof must preponderate in favor of the particular misconduct charged, the burden of the cost and expense is borne by the objecting creditor, and we are face to face constantly with the spectacle of seeing the Judge time and again forced by the mandate of the law, not by the dictates of his own conscience, to give back to a bankrupt his name and all that goes with it. You and I and the Judge know the man is a crook and a menace to honest commercial life; still the law throws him back to try the same tricks over again.

"Now I come to that colossal purveyor of iniquity, that institution of fraud which has robbed and is robbing the merchant of his goods, the credit man of his business perspicuity and sometimes of his job—the false financial statement. The remedy lies in securing by universal business adaptation a standard form of financial statement, requiring it to be filled out in a certain way and sent in a certain way, that is through the United States mails, and providing by State law that the swearing to a material matter in that statement knowingly would constitute the crime of perjury.

"It should be zealously adhered to by every credit organization throughout the length and breadth of the country that no merchandise be given on credit to any merchant, no matter how small the amount, before that particular statement is filled out in that particular manner, and sent in that particular way, so that either the State court or the United States court, whether before or after bankruptcy, if it could be proved that the person lied wilfully to secure a credit rating, should decree that that person should go to jail.

"The most onerous task the United States District Attorney's office has had to contend with was not the difficulty of the particular cases which have come before it for action, but the utter inadequacy of the penal provisions of the act and their inability to cover the manifold forms of commercial dishonesty. I would make several suggestions. In the first place I would suggest that when a bankrupt is a fugitive from justice the time during which he resides outside the jurisdiction is not to be considered in computing the time within which the statute of limitations shall be a bar to a prosecution.

"The bankruptcy act now provides for a one year limitation within which offences can be prosecuted. An actual illustration of the repugnancy to justice and reason which follows from such a provision is the recent Rafolowitz case. There the defendant stole upward of $15,000 from the estate in bankruptcy a week or two before the petition was filed.

"He fled the jurisdiction some weeks before the petition was filed and was absent for about four years. The Government some months ago secured information as to his whereabouts within the jurisdiction and shortly thereafter prosecution was commenced charging the bankrupt with a concealment of assets from his trustee in bankruptcy.

"The indictment, after an examination of the authorities and the law involved, was a short time ago annulled because there was no provision such as I have outlined above in the bankruptcy act. Here we have a spectacle of a crook, so stigmatized also by one of his many counsel because he perpetrated his fraud in a particularly shrewd way, who is free to roam the streets and is immune from prosecution. By the enactment of the above provision such a mockery of justice will cease.

"In the second place I would suggest that the limitation within which prosecution for violations of the penal provisions be commenced should be either three years from the date of the commission of the offence or one year after the discovery of the commission of the offence. Very often a discharge is secured or a composition is put through before a concealment is discovered. I could cite case after case where under the most reprehensible of facts a bankrupt has escaped just punishment on account of this provision of law.

"The adoption of a three year limitation would be a long step toward bringing within the teeth of the law most of the fraudulent cases in which rarely, if ever, are the facts which would warrant a criminal proceeding discovered more than two years after the institution of bankruptcy proceedings.

"I suggest further that it may be possible to use in criminal prosecution the bankrupt's testimony given during the examinations in bankruptcy. The provision of the act denying this right has been held by Judges to be unreasonable and pernicious in its application. It tends to the commission of perjury on top of prior perjury and oftentimes actually results in a miscarriage of justice.

"An illuminating example may be found in the Karp case, which was tried about one and a half years ago. Two brothers in the fur business in Atlantic City were indicted for concealing assets. The Government secured evidence of the sending of a telegram from Chicago to New York, showing that a certain parcel had been sent on a certain train from Chicago and would arrive at New York at a certain time.

"The telegram insisted that one of

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Samuel Hershenstein, Assistant U. S. District Attorney.

Royal Beauty of India Visits New York

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The Maharanee of Kapurthala.

Her Highness Jagat Jit Singh Bahadur, the Maharanee of Kapurthala, as she appeared at the Ritz-Carlton. With her husband, the Maharajah, and the Maharaja's son, she is in New York on the way to the Panama-Pacific Exposition. They have been extensively entertained while in the city. The Maharanee is a native of Spain.